

§ 10.247

- () Importer
- () Agent

Name

Title

Address

Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§10.244 through 10.246, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a “series of importations” means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§10.247 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under §10.245, including any statements or other information contained on a Certificate of Origin submitted to Customs under §10.246, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

- (1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;
- (2) Documentation and other information regarding the country of origin

of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence to document the use of U.S. or ATPDEA beneficiary country materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under §10.245, the importer:

(1) Must have records that explain how the importer came to the conclusion that the apparel or other textile article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under §10.243(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States or in an ATPDEA beneficiary country, the importer must have records that identify the producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in §10.244(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the ATPDEA beneficiary country to the United States. If the imported article was shipped through a country other than an ATPDEA beneficiary country and the invoices and other documents from the ATPDEA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in §10.243(d)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records

and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

§ 10.248 Additional requirements for preferential treatment of brasieres.

(a) *Definitions.* When used in this section, the following terms have the meanings indicated:

(1) *Producer.* "Producer" means an individual, corporation, partnership, association, or other entity or group that exercises direct, daily operational control over the production process in an ATPDEA beneficiary country.

(2) *Entity controlling production.* "Entity controlling production" means an individual, corporation, partnership, association, or other entity or group that is not a producer and that controls the production process in an ATPDEA beneficiary country through a contractual relationship or other indirect means.

(3) *Fabrics formed in the United States.* "Fabrics formed in the United States" means fabrics that were produced by a weaving, knitting, needling, tufting, felting, entangling or other fabric-making process performed in the United States.

(4) *Cost.* "Cost" when used with reference to fabrics formed in the United States means:

(i) The price of the fabrics when last purchased, f.o.b. port of exportation, as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(A) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price; or

(B) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, less the freight, insurance, packing, and other costs incurred in transporting the fabrics to the place of production if included in that price; or

(ii) If the price cannot be determined under paragraph (a)(4)(i) of this section or if Customs finds that price to be unreasonable, all reasonable expenses incurred in the growth, production, manufacture, or other processing of the

fabrics, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in forming the fabrics) and general expenses, plus a reasonable amount for profit, and the freight, insurance, packing, and other costs, if any, incurred in transporting the fabrics to the port of exportation.

(5) *Declared customs value.* "Declared customs value" when used with reference to fabric contained in an article means the sum of:

(i) The cost of fabrics formed in the United States that the producer or entity controlling production can verify; and

(ii) The cost of all other fabric contained in the article, exclusive of all findings and trimmings, determined as follows:

(A) In the case of fabric purchased by the producer or entity controlling production, the f.o.b. port of exportation price of the fabric as set out in the invoice or other commercial documents, or, if the price is other than f.o.b. port of exportation:

(1) The price as set out in the invoice or other commercial documents adjusted to arrive at an f.o.b. port of exportation price, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price; or

(2) If no exportation to an ATPDEA beneficiary country is involved, the price as set out in the invoice or other commercial documents, plus expenses for embroidering and dyeing, printing, and finishing operations applied to the fabric if not included in that price, but less the freight, insurance, packing, and other costs incurred in transporting the fabric to the place of production if included in that price;

(B) In the case of fabric for which the cost cannot be determined under paragraph (a)(5)(ii)(A) of this section or if Customs finds that cost to be unreasonable, all reasonable expenses incurred in the growth, production, or manufacture of the fabric, including the cost or value of materials (which includes the cost of non-recoverable scrap generated in the growth, production, or manufacture of the fabric), general expenses and embroidering and